



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 5192-99
15 January 2002

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 January 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Director, Naval Council of Personnel Boards dated 7 November 2000, a copy of which is attached, your rebuttal thereto, and the comments of your counsel.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Although it appears that you had an ear infection during a period of annual training, the Board was not persuaded that you were unfit for duty because of an otologic or other condition that was incurred while you were entitled to basic pay. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
WASHINGTON NAVY YARD
720 KENNON STREET SE RM 309
WASHINGTON, DC 20374-5023

IN REPLY REFER TO

5420
Ser: 00-21
7 Nov 2000

From: Director, Naval Council of Personnel Boards
To: Executive Director, Board for Correction of Naval Records
Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER
[REDACTED]
Ref: (a) Chairman, BCNR JRE:jdh DN: 5192-99 ltr of 26 Jul 00
(b) SECNAVINST 1850.4D

1. This responds to reference (a) which requested comments and a recommendation regarding petitioner's request for correction of her records to show that she was entitled to disability retirement at the time of her discharge from the naval service in April 1998. We have tentatively determined that the evidence in this case does not support the petitioner's request for a change to records to reflect entitlement to disability retired pay.

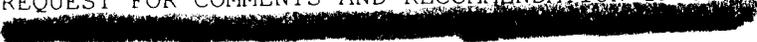
2. The petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned. The following comments and recommendations are provided.

a. There are two primary issues in this case. Did petitioner's otologic condition render her not physically qualified/unfit for duty? And if so, was her unfitting condition incurred or aggravated while she was on active duty? The first issue is difficult to answer given the apparent inconsistency between BUMED's January 1998 determination that petitioner was not physically qualified for retention, and her subsequent advancement to E-7; an act which normally presumes fitness. The absence from the record of a fitness report for the period after March 1996 contributes to the uncertainty regarding petitioner's fitness/unfitness.

b. The evidence of record also makes it difficult to determine whether petitioner's condition existed prior to service (EPTS), was incurred on active duty, or was service aggravated. The evidence implies that petitioner's condition EPTS since the oldest health record entry available (11 April 96) gives only a five-week history of symptoms - which is longer than the usual period of ACDUTRA.

c. In view of the above, the tentative recommendation is to deny petitioner's application. Reconsideration, however, is recommended contingent upon the following documentation being submitted for review:

1. Fitness reports more contemporary with petitioner's date of discharge;
2. Statement of service from Marine Headquarters which reflects periods of active service;
3. Expert Otolaryngologic opinion regarding the onset, degree of service aggravation, manifestations, and restrictions/impairments consequent to petitioner's condition;

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER


4. Clarification of Marine Corps promotion policy; specifically addressing petitioner's advancement to E-7 despite BUMED finding of not physically qualified.

3. In summary, the record in this case does not support a correction of the petitioner's records to reflect entitlement to disability retirement pay. Accordingly, tentatively recommend denial of the petitioner's request.

